Australian Government
Australian Public Service Commission

Marcus
By email: foi+request-8629-a20afd42@righttoknow.org.au

Our reference: SHC22-5014

Dear Marcus

Freedom of Information request

1. I am writing about your 27 March 2022 internal review request made under the *Freedom of Information Act 1982* (FOI Act), of a decision issued by the Australian Public Service Commission (Commission).

2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Background

3. On 20 March 2022 you requested access to the following documents under the FOI Act:

> *I refer to vacancy notification NN 10725159 on pages 34-36 in Public Service Gazette No PS19 published on 10 May 2018.*
>
> *The vacancy notification is for three National Judicial Registrar & District Registrar positions in the Federal Court (in Victoria, Queensland and Western Australia).*
>
> *It appears as though a redacted version of the selection report for the National Judicial Registrar & District Registrar position in Victoria has been granted access to on the Federal Court's disclosure log: see PA2925/06-13.*
>
> *Under the FOI Act, I would like access to any selection reports for the Queensland National Judicial Registrar & District Registrar and Western Australia National Judicial Registrar & District Registrar positions provided to the Australian Public Service Commission by staff in the Federal Court of Australia.*
>
> *There is a public interest in being provided with these selection reports because selection processes for registrars of the Federal Court have come under public scrutiny in the media and were the subject of investigation by the Australian Public Service Commission.*

4. On 25 March 2022 Ms Giorgina Strangio, Assistant Commissioner, Integrity, Performance & Employment Policy Group responded to your request. Ms Strangio identified two documents which fell within scope of your request. Ms Strangio granted you access in part to these document. Ms Strangio's decision was based on a consideration of the conditional

exemptions outlined in sections 47C, 47E(d) and 47F of the FOI Act and the public interest factors outlined in section 11B of the FOI Act.

Decision on your request for internal review

5. I am authorised under subsection 23(1) of the FOI Act to make FOI internal review decisions.

6. My role is to make a new decision on your request for internal review independently and impartially from the original decision maker. I was not involved or consulted in the making of Ms Strangio's decision. Internal review is a merit review process and I may exercise all the powers available to original decision maker.

7. After considering your request, I have decided to vary Ms Strangio's decision and provide greater access to the two documents that were released in part.

Reasons for decision

8. In making my decision on your internal review, I have had regard to:

    a) the terms of your request and the submissions you have made

    b) the content of the document you requested

    c) relevant provisions of the FOI Act

    d) The FOI guidelines on the Office of the Australian Information Commissioner (OAIC) website

9. I am satisfied that your request was valid under subsection 15(2) of the FOI Act and the scope of your request was sufficiently defined so that the Commission could locate the document that you were seeking access to.

47C of the FOI Act – Documents subject to deliberative process

10. A document is conditionally exempt if its disclosure under the FOI would disclose a deliberative matter of an agency, which may include an opinion or recommendation obtained in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency.

11. The documents that fall within scope primarily relate to an APS selection and recruitment process. The documents were also collected as part of the Commission's investigation functions.

12. I consider that materials in the documents are in the nature of opinions or recommendations that were obtained as part of a deliberative processes by APS staff in agency conducting a recruitment process. Therefore, I consider that these parts of the document contain the deliberative process involved in the functions of an agency and are conditionally exempt under section 47C of the FOI Act.

47E(d) of the FOI Act – Proper and efficient conduct of the operations of an agency

13. A document is conditionally exempt if its disclosure under the FOI Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency (section 47E(d)).

14. The FOI Guidelines make it clear that the potential effect of the disclosure must be both substantial and adverse.

15. In reviewing your request, I have considered the functions of the Australian Public Service Commissioner (Commissioner) and his delegates, including functions related to investigations under the PS Act. These functions require the Commission to appropriately investigate issues of misconduct in a timely and confidential manner.

16. I am satisfied that disclosure of certain parts of the documents would have a substantial and adverse effect on the proper and efficient conduct of operations of the Commission and an agency. In particular, I am satisfied that release of certain parts of the document would, or could reasonably be expected to, have a substantial adverse effect on the Commission's ability to undertake its statutory investigative functions in confidential manner.

17. I therefore consider that these parts of the requested document warranted exemption under section 47E(d) of the FOI Act.

Section 47F of the FOI Act – Personal privacy

18. A document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (section 47F).

19. In reviewing your request, I am satisfied that the documents contains personal information about a number of individuals including staff in the Australian Public Service (APS) and other individuals, including their qualifications and employment history.

20. I have had regard to the matters in subsection 47F(2) of the FOI Act and consider that the release of certain personal information would be unreasonable because:

    a) the names and contact details are generally not well known to the public

    b) release of the personal information of some individuals may cause stress or be detrimental to those individuals

    c) the personal information relates to staff acting in the course of their ordinary duties and release of this information does not advance scrutiny of any decisions falling within the scope of your request

21. I have considered your submissions and provided greater access to the documents as I consider that some of the material previously conditionally exempted is sufficiently public available or does not constitute personal information. In particular, I have removed redactions from:

    a) the signature of Ms Sia Lagos

    b) the date fields below the signatures in the documents

22. You state that Mr Pringle's signature is "all over the internet". Based on our searches Mr Pringle's signature is not easily accessible to a person not seeking or unfamiliar with Federal Court material.

23. You state it is "well known" that Murray Belcher and Russell Trott secured the roles of National Judicial Registrar & District Registrar in QLD and WA respectively. Although it is public knowledge those persons formally or currently occupied these roles, the processes relevant to their selection is not in the public domain.

24. I consider that the remainder of the material including Mr Pringle's signature and the name of the applicants includes personal information is conditionally exempt under section 47F as disclosure would involve the unreasonable disclosure of personal information of a number of individuals.

Section 11B of the FOI Act – Public Interest test

25. I have considered the public interest factors set out in section 11B of the FOI Act and your submissions on why there is public interest in granting access to the exempted parts of the document.

26. I consider the following factors favouring disclosure, as set out in in subsection 11B(3) of the FOI Act, are relevant:

    a) access would promote the objects of the FOI Act; and

    b) access would inform debate on a matter of public importance;

27. I consider the following factors do not favour providing access to the conditionally exempt material in the document:

    a) access could reasonably be expected to prejudice the privacy of the individuals considered in the document; and

    b) there is a public interest in APS employers satisfying their obligations under the *Work Health and Safety Act 2011* by preventing APS staff members from exposure to potential harassment or threats in a public forum

    c) the disclosure of the Commission's deliberative processes will impact on future deliberative processes and efficiency with which the Commission can support the functions of the Commissioner

    d) the disclosure of certain information can have a substantial adverse effect on the proper and efficient conduct of the operations of the Commission

28. I have not had regard to any irrelevant factors as set out in subsection 11B(4) of the FOI Act.

29. I consider that the public interest factors against disclosure of the conditionally exempt material in the documents outweigh the public interest factors favouring providing access.

30. While I note that the topic of the documents have been subject to media attention and may be of interest to the public or inform public debate, I consider that on balance, the effects

of providing access to the conditionally exempt material outweighs the public interest factors favouring providing access to the conditionally exempt material.

31. I therefore find that the documents are subject to conditional exemptions under sections 47C, 47E and 47F of the FOI Act and that disclosure is not in the public interest.

32. Based on the reasoning above, I am satisfied that the Commission has taken appropriate steps in processing your request under the FOI Act and reasonably applied exemptions to redact certain parts of the documents prior to release.

33. On this basis, I vary the original decision made by Ms Strangio on 25 March 2022 and provide greater access to the documents released in part.

Contacts

34. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3500 or by email at foi@apsc.gov.au.

Review rights

35. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A**.

Yours sincerely

Patrick Hetherington

Authorised FOI decision maker

4 April 2022

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: **www.oaic.gov.au**

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au